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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,096	10/17/2003	Tomoko Sugito	121027-0201	9087

35684 7590 03/09/2007
BUTZEL LONG
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ANN ARBOR, MI 48104

EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/688,096

Applicant(s)

SUGITO ET AL.

Examiner

Jacqueline F. Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/26/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 6/22/06 regarding claims 1-10 are moot in view of the new rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Numano et al. USPN 5447508.

As to claims 1, 5, and 6, Numano describes a disposable pants-type wearing articles comprising an elastically stretchable chassis (col. 3, lines 11-12), having a front waist region 5, a rear waist region 6, and a crotch region 7 extending therebetween. The chassis is composed of a first elastic segment 11 extending substantially along peripheral portions forming leg holes from a transversely middle zone of the crotch region 7 to lateral portions 17 and 18 of front and rear waist regions so that a transversely inner edge of the first elastic segment 11 has a shape that curves transversely outward from a longitudinal central portion to longitudinal opposite ends of the first elastic segment (Figure 1, col. 2, line 58 through col. 3, line 3). The second

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elastic segment 12 is defined by a remaining portion of the chassis except for the first elastic segment 11. As broadly as claimed, the examiner interprets a remaining portion of the chassis to include any part of the chassis that does not define the first elastic segment, such as the leg opening where elastic 12 starts to the regions 15 and 16 where the elastic 12 terminates (col. 3, lines 3-8). Numano discloses the elastic segments have a stretch stress higher in the crotch zone 7 as compared to the front and rear zones 5, 6 (col. 3, lines 25-31). While both elastics 11 and 12 have this variance in stretch stress, claim 1 reads "a stretch stress higher than that of said elastic segment". The portion of elastic 11 in the crotch zone L7 is higher than the stretch stress of the elastic 12 in the front and rear bodies L5 and L6 respectively.

As to claim 2, the lateral portions 15, 16, 17, and 18 of the front and rear waist regions 5, and 6 are releasably engaged with each other via the fastener 8.

As to claim 5, as the front and rear waist regions are joined along lateral portions of the waist regions, the first elastic segments 11, would be contiguous (Figure 1).

As to claim 7, the chassis has at least one elastic member 52 in the waist portion extending outside the first elastic segment 11 along the peripheral portion.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 3 and 8-10, as best understood by the examiner are rejected under 35 U.S.C. 103(a) as being unpatentable over Numano et al. USPN 5447508.

Numano discloses the claimed invention except Numano does not disclose the lateral portions of the front and rear waist regions are permanently joined together to define waist holes and leg holes. The permanently joined lateral portions are an obvious variant of the disclosed releasably joined lateral portions. It would have been an obvious matter of design choice to have the lateral portions permanently joined since

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applicant has not disclosed that the permanent connection solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with releasably or permanently connected lateral portions.

As to claim 8, Numano does not disclose the claimed stretch stress or stretch ratio. However, Numano describes the general conditions of a diaper having first and second elastic segments, with the first elastic segment exhibiting a stretch stress higher than a stretch stress of the second elastic segment. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the article with the claimed stretch stress and stretch ratio values of the present invention, since where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation, *In re Aller et al.* 105 USPQ 233.

As to claim 9, Numano discloses the claimed invention except Numano discloses elastic threads instead of an elastic sheet. It would have been an obvious matter of design choice to have an elastic sheet or elastic threads since applicant has not disclosed that the elastic sheet solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the elastic threads. As to the formation of the second elastic segment, these limitations are directed to a process of making the article. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the

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product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). MPEP 2113.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Numano 5447508 in view of Mishima EP 1243237. Numano disclose the present invention except for an annular protrusion. Mishima discloses such a protrusion in an absorbent article for the benefit of guiding bodily discharge into a receptacle. It would have been obvious to one having ordinary skill the art to modify the invention of Numano to provide an protrusion/receptacle for the benefit of guiding waste and also separating solid waste from urine, which can lead to diaper rash. The annular protrusion of Numano/Mishima extends upward from the crotch region and terminates at a free distal end as broadly as claimed. The examiner interprets the term 'free' broadly and includes the distal end being free from other components such as the backsheet.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jacqueline F Stephens
Primary Examiner
Art Unit 3761

March 5, 2007